

AMENDED IN SENATE APRIL 1, 2013

**SENATE BILL**

**No. 785**

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**Introduced by Senator Wolk**

February 22, 2013

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An act to repeal Sections 14661 and 14661.1 of the Government Code, to amend Section 32132.5 of the Health and Safety Code, and to add Article 6 (commencing with Section 10186) to Chapter 1 of Part 2, ~~and Article of Division 2 of, to add Chapter 4~~ (commencing with Section 22160) to ~~Chapter 2 of Part 3; of Division 2 of, and to repeal~~ Sections 20133, 20175.2, 20193, 20209, 20301.5, and 20688.6 of, and to repeal ~~Article 6.7 (commencing with Section 20209), and Article 22~~ (commencing with Section 20360), of Chapter 1 of Part 3 of Division 2 of, the Public Contract Code, relating to design-build.

LEGISLATIVE COUNSEL'S DIGEST

SB 785, as amended, Wolk. Design-build.

Existing law authorizes the Department of General Services, the Department of Corrections and Rehabilitation, and various local agencies to use the design-build procurement process for specified public works under different laws.

This bill would repeal those authorizations, and enact provisions that would authorize the Department of General Services, the Department of Corrections and Rehabilitation, and those local agencies, as defined, to use the design-build procurement process for specified public works. The bill would require moneys that are collected under these provisions to be deposited into the State Public Works Enforcement Fund, subject to appropriation by the Legislature. ~~The bill would provide that specified information related to the procurement of design-build contracts is exempt from the California Public Records Act.~~ The bill would require

specified information to be verified under penalty of perjury. By expanding the crime of perjury, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. It is the intent of the Legislature to consolidate  
2 existing design-build statutes and eliminate inconsistencies in  
3 statutory language by adopting authority of general application to  
4 identified agencies and repealing superseded sections.

5 SEC. 2. Section 14661 of the Government Code is repealed.

6 SEC. 3. Section 14661.1 of the Government Code is repealed.

7 SEC. 4. Section 32132.5 of the Health and Safety Code is  
8 amended to read:

9 32132.5. (a) Notwithstanding Section 32132 or any other  
10 provision of law, upon approval by the board of directors of the  
11 Sonoma Valley Health Care District, the design-build procedure  
12 described in Article 6 (commencing with Section 10186) of Chapter  
13 1 of Part 2 of Division 2 of the Public Contract Code may be used  
14 to assign contracts for the construction of a building or  
15 improvements directly related to construction of a hospital or health  
16 facility building at the Sonoma Valley Hospital.

17 (b) For purposes of this section, all references in Article 6  
18 (commencing with Section 10186) of Chapter 1 of Part 2 of  
19 Division 2 of the Public Contract Code to “county” and “governing  
20 body” shall mean the Sonoma Valley Health Care District.

21 (c) A hospital building project utilizing the design-build process  
22 authorized by subdivision (a) shall be reviewed and inspected in  
23 accordance with the standards and requirements of the Alfred E.  
24 Alquist Hospital Facilities Seismic Safety Act of 1983 (Chapter 1  
25 (commencing with Section 129675) of Part 7 of Division 107).

1 SEC. 5. Article 6 (commencing with Section 10186) is added  
2 to Chapter 1 of Part 2 of Division 2 of the Public Contract Code,  
3 to read:

4  
5 Article 6. State Agency Design-Build Projects  
6

7 10186. (a) The Legislature finds and declares that the  
8 design-build method of project delivery, using a best value  
9 procurement methodology, has been authorized for various  
10 agencies that have reported benefits from such projects including  
11 reduced project costs, expedited project completion, and design  
12 features that are not achievable through the traditional  
13 design-bid-build method.

14 (b) It is the intent of the Legislature that the following occur:

15 (1) This article provides general authorization for certain state  
16 agencies to use design-build for projects, excluding projects on  
17 the state highway system.

18 (2) This article shall not be deemed to provide a preference for  
19 the design-build method over other procurement methodologies.

20 10187. For purposes of this article, the following definitions  
21 apply:

22 (a) “Best value” means a value determined by evaluation of  
23 proposals with reference to specified criteria objectively applied,  
24 including, but not limited to, price, quality of technical proposals,  
25 qualifications of key personnel, and other criteria deemed  
26 appropriate by the director. A best value determination may entail  
27 selection of the lowest priced technically acceptable proposals or  
28 selection of the best proposal for a fixed price established by the  
29 procuring agency, or it may consist of a tradeoff between price  
30 and other specified factors.

31 (b) “Construction subcontract” means each subcontract awarded  
32 by the design-build entity to a subcontractor that will perform work  
33 or labor or render service to the design-build entity in or about the  
34 construction of the work or improvement, or a subcontractor  
35 licensed by the State of California that, under subcontract to the  
36 design-build entity, specially fabricates and installs a portion of  
37 the work or improvement according to detailed drawings contained  
38 in the plans and specifications produced by the design-build team.

39 (c) “Department” means the Department of General Services  
40 and the Department of Corrections and Rehabilitation.

1 (d) “Design-build” means a project delivery process in which  
2 both the design and construction of a project are procured from a  
3 single entity.

4 (e) “Design-build entity” means a corporation, limited liability  
5 company, partnership, joint venture, or other legal entity that is  
6 able to provide appropriately licensed contracting, architectural,  
7 and engineering services as needed pursuant to a design-build  
8 contract.

9 (f) “Design-build team” means the design-build entity itself and  
10 the individuals and other entities identified by the design-build  
11 entity as members of its team. *Members shall include the general*  
12 *contractor and, if utilized in the design of the project, all electrical,*  
13 *mechanical, and plumbing contractors.*

14 (g) “Director” means, with respect to procurements undertaken  
15 by the Department of General Services, the Director of General  
16 Services or, with respect to procurements undertaken by the  
17 Department of Corrections and Rehabilitation, the secretary of that  
18 department.

19 10188. (a) Notwithstanding any other law, the director,  
20 following notification to the State Public Works Board, may  
21 procure design-build contracts for public works projects in excess  
22 of one million dollars (\$1,000,000), awarding the contract using  
23 either the low bid or best value, provided that this article shall not  
24 apply to any projects on the state highway system.

25 (b) The director shall develop guidelines for a standard  
26 organizational conflict-of-interest policy, consistent with applicable  
27 law, regarding the ability of a person or entity, that performs  
28 services for the department relating to the solicitation of a  
29 design-build project, to submit a proposal as a design-build entity,  
30 or to join a design-build team. This conflict-of-interest policy shall  
31 apply to each department entering into design-build contracts  
32 authorized under this article.

33 10189. (a) For contracts for public works projects awarded on  
34 or after the effective date of the regulations adopted by the  
35 Department of Industrial Relations pursuant to subdivision (g) of  
36 Section 1771.5 of the Labor Code, the department shall reimburse  
37 the Department of Industrial Relations for its reasonable and  
38 directly related costs of performing prevailing wage monitoring  
39 and enforcement on public works projects pursuant to rates  
40 established by the department as set forth in subdivision (h) of

Section 1771.5 of the Labor Code. All moneys collected pursuant to this subdivision shall be deposited in the State Public Works Enforcement Fund, created by Section 1771.3 of the Labor Code, and shall, subject to appropriation by the Legislature, be used only for enforcement of prevailing wage requirements on those projects.

(b) In lieu of reimbursing the Department of Industrial Relations for its reasonable and directly related costs of performing monitoring and enforcement on public works projects, the department may elect to continue operating an existing previously approved labor compliance program to monitor and enforce prevailing wage requirements on the project if it has either not contracted with a third party to conduct its labor compliance program and requests and receives approval from the department to continue its existing program or it enters into a collective bargaining agreement that binds all of the contractors performing work on the project and that includes a mechanism for resolving disputes about the payment of wages.

10190. The director shall notify the State Public Works Board regarding the method to be used for selecting the design-build entity, prior to advertising the design-build project.

10191. The procurement process for the design-build projects shall progress as follows:

(a) (1) The director shall prepare a set of documents setting forth the scope and estimated price of the project. The documents may include, but need not be limited to, the size, type, and desired design character of the project, performance specifications covering the quality of materials, equipment, workmanship, preliminary plans or building layouts, or any other information deemed necessary to describe adequately the department's needs. The performance specifications and any plans shall be prepared by a design professional who is duly licensed and registered in California.

(2) *The documents shall not include a design-build-operate contract for any project.*

(b) Based on the documents prepared under subdivision (a), the director shall prepare and issue a request for qualifications in order to prequalify or short-list the design-build entities whose proposals shall be evaluated for final selection. The request for qualifications shall include, but need not be limited to, the following elements:

1 (1) Identification of the basic scope and needs of the project or  
2 contract, the expected cost range, the methodology that will be  
3 used by the department to evaluate proposals, the procedure for  
4 final selection of the design-build entity, and any other information  
5 deemed necessary by the director to inform interested parties of  
6 the contracting opportunity.

7 (2) (A) Significant factors that the department reasonably  
8 expects to consider in evaluating qualifications, including technical  
9 design and construction expertise, skilled labor force availability,  
10 and all other nonprice-related factors.

11 (B) For purposes of subparagraph (A), skilled labor force  
12 availability shall be deemed satisfied by the existence of an  
13 agreement with a registered apprenticeship program, approved by  
14 the California Apprenticeship Council, that has graduated at least  
15 one apprentice in each of the preceding five years. This graduation  
16 requirement shall not apply to programs providing apprenticeship  
17 training for any craft that was first deemed by the federal  
18 Department of Labor and the Department of Industrial Relations  
19 to be an apprenticeable craft within the five years prior to the  
20 effective date of this article.

21 (3) A standard template request for statements of qualifications  
22 prepared by the department. In preparing the standard template,  
23 the department may consult with the construction industry, the  
24 building trades and surety industry, and other agencies interested  
25 in using the authorization provided by this article. The template  
26 shall require the following information:

27 (A) If the design-build entity is a privately held corporation,  
28 limited liability company, partnership, or joint venture, a listing  
29 of all of the shareholders, partners, or members known at the time  
30 of statement of qualification submission who will perform work  
31 on the project.

32 (B) Evidence that the members of the design-build team have  
33 completed, or demonstrated the experience, competency, capability,  
34 and capacity to complete projects of similar size, scope, or  
35 complexity, and that proposed key personnel have sufficient  
36 experience and training to competently manage and complete the  
37 design and construction of the project, and a financial statement  
38 that ensures that the design-build entity has the capacity to  
39 complete the project.

1 (C) The licenses, registration, and credentials required to design  
2 and construct the project, including, but not limited to, information  
3 on the revocation or suspension of any license, credential, or  
4 registration.

5 (D) Evidence that establishes that the design-build entity has  
6 the capacity to obtain all required payment and performance  
7 bonding, liability insurance, and errors and omissions insurance.

8 (E) Information concerning workers' compensation experience  
9 history and a worker safety program.

10 (F) If the proposed design-build entity is a corporation, limited  
11 liability company, partnership, joint venture, or other legal entity,  
12 a copy of the organizational documents or agreement committing  
13 to form the organization.

14 (G) An acceptable safety record. A proposer's safety record  
15 shall be deemed acceptable if its experience modification rate for  
16 the most recent three-year period is an average of 1.00 or less, and  
17 its average total recordable injury or illness rate and average lost  
18 work rate for the most recent three-year period does not exceed  
19 the applicable statistical standards for its business category or if  
20 the proposer is a party to an alternative dispute resolution system  
21 as provided for in Section 3201.5 of the Labor Code.

22 (4) (A) The information required under this subdivision shall  
23 be certified under penalty of perjury by the design-build entity and  
24 its general partners or joint venture members.

25 (B) Information required under this subdivision that is not  
26 otherwise a public record under the California Public Records Act  
27 (Chapter 3.5 (commencing with Section 6250) of Division 7 of  
28 Title 1 of the Government Code) shall not be open to public  
29 inspection.

30 (c) Based on the documents prepared as described in subdivision  
31 (a), the director shall prepare a request for proposals that invites  
32 prequalified or short-listed entities to submit competitive sealed  
33 proposals in the manner prescribed by the department. The request  
34 for proposals shall include, but need not be limited to, the following  
35 elements:

36 (1) Identification of the basic scope and needs of the project or  
37 contract, the estimated cost of the project, the methodology that  
38 will be used by the department to evaluate proposals, whether the  
39 contract will be awarded on the basis of low bid or best value, and

1 any other information deemed necessary by the department to  
2 inform interested parties of the contracting opportunity.

3 (2) Significant factors that the department reasonably expects  
4 to consider in evaluating proposals, including, but not limited to,  
5 cost or price and all nonprice-related factors.

6 (3) The relative importance or the weight assigned to each of  
7 the factors identified in the request for proposals.

8 (4) Where a best value selection method is used, the department  
9 may reserve the right to request proposal revisions and hold  
10 discussions and negotiations with responsive proposers, in which  
11 case the department shall so specify in the request for proposals  
12 and shall publish separately or incorporate into the request for  
13 proposals applicable procedures to be observed by the department  
14 to ensure that any discussions or negotiations are conducted in  
15 good faith.

16 (d) For those projects utilizing low bid as the final selection  
17 method, the competitive bidding process shall result in lump-sum  
18 bids by the prequalified or short-listed design-build entities, and  
19 awards shall be made to the design-build entity that is the lowest  
20 responsible bidder.

21 (e) For those projects utilizing best value as a selection method,  
22 the design-build competition shall progress as follows:

23 (1) Competitive proposals shall be evaluated by using only the  
24 criteria and selection procedures specifically identified in the  
25 request for proposals.

26 (2) Pursuant to subdivision (c), the department may hold  
27 discussions or negotiations with responsive proposers using the  
28 process articulated in the department's request for proposals.

29 (3) When the evaluation is complete, the responsive proposers  
30 shall be ranked based on a determination of value provided,  
31 provided that no more than three proposers are required to be  
32 ranked.

33 (4) The award of the contract shall be made to the responsible  
34 design-build entity whose proposal is determined by the director  
35 to have offered the best value to the public.

36 (5) Notwithstanding any other provision of this code, upon  
37 issuance of a contract award, the director shall publicly announce  
38 its award, identifying the design-build entity to which the award  
39 is made, along with a written decision supporting its contract award  
40 and stating the basis of the award.



1 (6) The written decision supporting the director's contract award,  
2 described in paragraph (5), and the contract file shall provide  
3 sufficient information to satisfy an external audit.

4 10192. (a) The design-build entity shall provide payment and  
5 performance bonds for the project in the form and in the amount  
6 required by the director, and issued by a California admitted surety.  
7 The amount of the payment bond shall not be less than the amount  
8 of the performance bond.

9 (b) The design-build contract shall require errors and omissions  
10 insurance coverage for the design elements of the project.

11 (c) The department shall develop a standard form of payment  
12 and performance bond for its design-build projects.

13 10193. (a) The department, in each design-build request for  
14 proposals, may identify specific types of subcontractors that must  
15 be included in the design-build entity statement of qualifications  
16 and proposal. All construction subcontractors that are identified  
17 in the proposal shall be afforded all the protections of Chapter 4  
18 (commencing with Section 4100) of Part 1.

19 (b) Following award of the design-build contract, the  
20 design-build entity shall proceed as follows in awarding  
21 construction subcontracts with a value exceeding one-half of 1  
22 percent of the contract price allocable to construction work:

23 (1) Provide public notice of availability of work to be  
24 subcontracted in accordance with the publication requirements  
25 applicable to the competitive bidding process of the department,  
26 including a fixed date and time on which qualifications statements,  
27 bids, or proposals will be due.

28 (2) Establish reasonable qualification criteria and standards.

29 (3) Award the subcontract either on a best value basis or to the  
30 lowest responsible bidder. The process may include prequalification  
31 or short-listing. The foregoing process does not apply to  
32 construction subcontractors listed in the original proposal.  
33 Subcontractors awarded construction subcontracts under this  
34 subdivision shall be afforded all the protections of Chapter 4  
35 (commencing with Section 4100) of Part 1.

36 10194. (a) If the department elects to award a project pursuant  
37 to this article, retention proceeds withheld by the department from  
38 the design-build entity shall not exceed 5 percent, except as  
39 otherwise specified in this section.

1 (b) (1) In a contract between the design-build entity and the  
2 subcontractor, and in a contract between a subcontractor and any  
3 subcontractor thereunder, the percentage of the retention proceeds  
4 withheld may not exceed the percentage specified in the contract  
5 between the department and the design-build entity.

6 (2) This subdivision shall not apply if the design-build entity  
7 provides written notice to any subcontractor that is not a member  
8 of the design-build entity, prior to, or at the time the bid is  
9 requested from the subcontractor, that a bond may be required and  
10 the subcontractor subsequently is unable or refuses to furnish a  
11 bond to the design-build entity, then the design-build entity may  
12 withhold retention proceeds in excess of the percentage specified  
13 in the contract between the department and the design-build entity  
14 from any payment made by the design-build entity to the  
15 subcontractor.

16 (3) Notwithstanding any other provision of this section, the  
17 retention proceeds withheld from any payment by a department  
18 from the original design-build entity, by the original design-build  
19 entity contractor from any subcontractor, and by a subcontractor  
20 from any subcontractor thereunder, may exceed 5 percent on  
21 specific projects where the director has made a finding prior to the  
22 proposal due date that the project is substantially complex and  
23 therefore requires a higher retention amount than 5 percent, and  
24 the department includes both this finding and the actual retention  
25 amount in the procurement documents.

26 10194. Nothing in this article affects, expands, alters, or limits  
27 any rights or remedies otherwise available at law.

28 SEC. 6. Section 20133 of the Public Contract Code is repealed.

29 SEC. 7. Section 20175.2 of the Public Contract Code is  
30 repealed.

31 SEC. 8. Section 20193 of the Public Contract Code is repealed.

32 SEC. 9. Section 20209 of the Public Contract Code is repealed.

33 SEC. 10. Section 20301.5 of the Public Contract Code is  
34 repealed.

35 SEC. 11. Article 22 (commencing with Section 20360) of  
36 Chapter 1 of Part 3 of Division 2 of the Public Contract Code is  
37 repealed.

38 SEC. 12. Section 20688.6 of the Public Contract Code is  
39 repealed.

1 SEC. 13. Chapter 4 (commencing with Section 22160) is added  
2 to Part 3 of Division 2 of the Public Contract Code, to read:

3  
4 CHAPTER 4. LOCAL AGENCY DESIGN-BUILD PROJECTS  
5

6 22160. (a) The Legislature finds and declares that the  
7 design-build method of project delivery, using a best value  
8 procurement methodology, has been authorized for various  
9 agencies that have reported benefits from such projects including  
10 reduced project costs, expedited project completion, and design  
11 features that are not achievable through the traditional  
12 design-bid-build method.

13 (b) It is the intent of the Legislature that the following occur:

14 (1) This article provides general authorization for local agencies  
15 to use design-build for projects, excluding projects on the state  
16 highway system.

17 (2) This article shall not be deemed to provide a preference for  
18 the design-build method over other procurement methodologies.

19 22161. For purposes of this article, the following definitions  
20 apply:

21 (a) “Best value” means a value determined by evaluation of  
22 proposals with reference to specified criteria objectively applied,  
23 including, but not limited to, price, quality of technical proposals,  
24 qualifications of key personnel, and other criteria deemed  
25 appropriate by the local agency. A best value determination may  
26 entail selection of the lowest priced technically acceptable proposal  
27 or selection of the best proposal for a fixed price established by  
28 the procuring agency, or it may consist of a tradeoff between price  
29 and other specified factors.

30 (b) “Construction subcontract” means each subcontract awarded  
31 by the design-build entity to a subcontractor that will perform work  
32 or labor or render service to the design-build entity in or about the  
33 construction of the work or improvement, or a subcontractor  
34 licensed by the State of California that, under subcontract to the  
35 design-build entity, specially fabricates and installs a portion of  
36 the work or improvement according to detailed drawings contained  
37 in the plans and specifications produced by the design-build team.

38 (c) “Design-build” means a project delivery process in which  
39 both the design and construction of a project are procured from a  
40 single entity.

1 (d) “Design-build entity” means a corporation, limited liability  
2 company, partnership, joint venture, or other legal entity that is  
3 able to provide appropriately licensed contracting, architectural,  
4 and engineering services as needed pursuant to a design-build  
5 contract.

6 (e) “Design-build team” means the design-build entity itself  
7 and the individuals and other entities identified by the design-build  
8 entity as members of its team. *Members shall include the general*  
9 *contractor and, if utilized in the design of the project, all electrical,*  
10 *mechanical, and plumbing contractors.*

11 (f) “Local agency” means the following:

12 (1) A city, county, or city and county.

13 (2) A special district that operates wastewater facilities, solid  
14 waste management facilities, or water recycling facilities.

15 (3) Any transit district, included transit district, municipal  
16 operator, included municipal operator, or transit development  
17 board, as defined in Section 99210 of the Public Utilities Code, or  
18 a consolidated agency, as defined in Section 132353.1 of the Public  
19 Utilities Code, or any joint powers authority formed to provide  
20 transit service.

21 22162. (a) Notwithstanding any other law, a local agency,  
22 with approval of its governing body, may procure design-build  
23 contracts for public works projects in excess of one million dollars  
24 (\$1,000,000), awarding the contract either the low bid or the best  
25 value, provided that this article shall not apply to any projects on  
26 the state highway system.

27 (b) The local agency shall develop guidelines for a standard  
28 organizational conflict-of-interest policy, consistent with applicable  
29 law, regarding the ability of a person or entity, that performs  
30 services for the local agency relating to the solicitation of a  
31 design-build project, to submit a proposal as a design-build entity,  
32 or to join a design-build team. This conflict-of-interest policy shall  
33 apply to each local agency entering into design-build contracts  
34 authorized under this article.

35 22163. (a) For contracts for public works projects awarded on  
36 or after the effective date of the regulations adopted by the  
37 Department of Industrial Relations pursuant to subdivision (g) of  
38 Section 1771.5 of the Labor Code, the local agency shall reimburse  
39 the department for its reasonable and directly related costs of  
40 performing prevailing wage monitoring and enforcement on public

works projects pursuant to rates established by the department as set forth in subdivision (h) of Section 1771.5 of the Labor Code. All moneys collected pursuant to this subdivision shall be deposited in the State Public Works Enforcement Fund, created by Section 1771.3 of the Labor Code, and shall, subject to appropriation by the Legislature, be used only for enforcement of prevailing wage requirements on those projects.

(b) In lieu of reimbursing the Department of Industrial Relations for its reasonable and directly related costs of performing monitoring and enforcement on public works projects, the local agency may elect to continue operating an existing previously approved labor compliance program to monitor and enforce prevailing wage requirements on the project if it has either not contracted with a third party to conduct its labor compliance program and requests and receives approval from the department to continue its existing program or it enters into a collective bargaining agreement that binds all of the contractors performing work on the project and that includes a mechanism for resolving disputes about the payment of wages.

22164. The procurement process for the design-build projects shall progress as follows:

(a) (1) The local agency shall prepare a set of documents setting forth the scope and estimated price of the project. The documents may include, but need not be limited to, the size, type, and desired design character of the project, performance specifications covering the quality of materials, equipment, workmanship, preliminary plans or building layouts, or any other information deemed necessary to describe adequately the local agency's needs. The performance specifications and any plans shall be prepared by a design professional who is duly licensed and registered in California.

(2) *The documents shall not include a design-build-operate contract for any project.*

(b) Based on the documents prepared under subdivision (a), the local agency shall prepare and issue a request for qualifications in order to prequalify or short-list the design-build entities whose proposals shall be evaluated for final selection. The request for qualifications shall include, but need not be limited to, the following elements:

1 (1) Identification of the basic scope and needs of the project or  
2 contract, the expected cost range, the methodology that will be  
3 used by the local agency to evaluate proposals, the procedure for  
4 final selection of the design-build entity, and any other information  
5 deemed necessary by the local agency to inform interested parties  
6 of the contracting opportunity.

7 (2) (A) Significant factors that the local agency reasonably  
8 expects to consider in evaluating qualifications, including technical  
9 design and construction expertise, skilled labor force availability,  
10 and all other nonprice-related factors.

11 (B) For purposes of subparagraph (A), skilled labor force  
12 availability shall be deemed satisfied by the existence of an  
13 agreement with a registered apprenticeship program, approved by  
14 the California Apprenticeship Council, that has graduated at least  
15 one apprentice in each of the preceding five years. This graduation  
16 requirement shall not apply to programs providing apprenticeship  
17 training for any craft that was first deemed by the federal  
18 Department of Labor and the Department of Industrial Relations  
19 to be an apprenticeable craft within the five years prior to the  
20 effective date of this article.

21 (3) A standard template request for statements of qualifications  
22 prepared by the local agency. In preparing the standard template,  
23 the local agency may consult with the construction industry, the  
24 building trades and surety industry, and other local agencies  
25 interested in using the authorization provided by this article. The  
26 template shall require the following information:

27 (A) If the design-build entity is a privately held corporation,  
28 limited liability company, partnership, or joint venture, a listing  
29 of all of the shareholders, partners, or members known at the time  
30 of statement of qualification submission who will perform work  
31 on the project.

32 (B) Evidence that the members of the design-build team have  
33 completed, or demonstrated the experience, competency, capability,  
34 and capacity to complete projects of similar size, scope, or  
35 complexity, and that proposed key personnel have sufficient  
36 experience and training to competently manage and complete the  
37 design and construction of the project, and a financial statement  
38 that ensures that the design-build entity has the capacity to  
39 complete the project.

1 (C) The licenses, registration, and credentials required to design  
2 and construct the project, including, but not limited to, information  
3 on the revocation or suspension of any license, credential, or  
4 registration.

5 (D) Evidence that establishes that the design-build entity has  
6 the capacity to obtain all required payment and performance  
7 bonding, liability insurance, and errors and omissions insurance.

8 (E) Information concerning workers' compensation experience  
9 history and a worker safety program.

10 (F) If the proposed design-build entity is a corporation, limited  
11 liability company, partnership, joint venture, or other legal entity,  
12 a copy of the organizational documents or agreement committing  
13 to form the organization.

14 (G) An acceptable safety record. A proposer's safety record  
15 shall be deemed acceptable if its experience modification rate for  
16 the most recent three-year period is an average of 1.00 or less, and  
17 its average total recordable injury or illness rate and average lost  
18 work rate for the most recent three-year period does not exceed  
19 the applicable statistical standards for its business category or if  
20 the proposer is a party to an alternative dispute resolution system  
21 as provided for in Section 3201.5 of the Labor Code.

22 (4) (A) The information required under this subdivision shall  
23 be certified under penalty of perjury by the design-build entity and  
24 its general partners or joint venture members.

25 (B) Information required under this subdivision that is not  
26 otherwise a public record under the California Public Records Act  
27 (Chapter 3.5 (commencing with Section 6250) of Division 7 of  
28 Title 1 of the Government Code) shall not be open to public  
29 inspection.

30 (c) Based on the documents prepared as described in subdivision  
31 (a), the local agency shall prepare a request for proposals that  
32 invites prequalified or short-listed entities to submit competitive  
33 sealed proposals in the manner prescribed by the local agency.  
34 The request for proposals shall include, but need not be limited  
35 to, the following elements:

36 (1) Identification of the basic scope and needs of the project or  
37 contract, the estimated cost of the project, the methodology that  
38 will be used by the local agency to evaluate proposals, whether  
39 the contract will be awarded on the basis of low bid or best value,

1 and any other information deemed necessary by the local agency  
2 to inform interested parties of the contracting opportunity.

3 (2) Significant factors that the local agency reasonably expects  
4 to consider in evaluating proposals, including, but not limited to,  
5 cost or price and all nonprice-related factors.

6 (3) The relative importance or the weight assigned to each of  
7 the factors identified in the request for proposals.

8 (4) Where a best value selection method is used, the local agency  
9 may reserve the right to request proposal revisions and hold  
10 discussions and negotiations with responsive proposers, in which  
11 case the local agency shall so specify in the request for proposals  
12 and shall publish separately or incorporate into the request for  
13 proposals applicable procedures to be observed by the local agency  
14 to ensure that any discussions or negotiations are conducted in  
15 good faith.

16 (d) For those projects utilizing low bid as the final selection  
17 method, the competitive bidding process shall result in lump-sum  
18 bids by the prequalified or short-listed design-build entities, and  
19 awards shall be made to the design-build entity that is the lowest  
20 responsible bidder.

21 (e) For those projects utilizing best value as a selection method,  
22 the design-build competition shall progress as follows:

23 (1) Competitive proposals shall be evaluated by using only the  
24 criteria and selection procedures specifically identified in the  
25 request for proposals.

26 (2) Pursuant to subdivision (c), the local agency may hold  
27 discussions or negotiations with responsive proposers using the  
28 process articulated in the local agency's request for proposals.

29 (3) When the evaluation is complete, the responsive proposers  
30 shall be ranked based on a determination of value provided,  
31 provided that no more than three proposers are required to be  
32 ranked.

33 (4) The award of the contract shall be made to the responsible  
34 design-build entity whose proposal is determined by the local  
35 agency to have offered the best value to the public.

36 (5) Notwithstanding any other provision of this code, upon  
37 issuance of a contract award, the local agency shall publicly  
38 announce its award, identifying the design-build entity to which  
39 the award is made, along with a written decision supporting its  
40 contract award and stating the basis of the award.



1 (6) The written decision supporting the local agency's contract  
2 award, described in paragraph (5), and the contract file shall  
3 provide sufficient information to satisfy an external audit.

4 22165. (a) The design-build entity shall provide payment and  
5 performance bonds for the project in the form and in the amount  
6 required by the local agency, and issued by a California admitted  
7 surety. The amount of the payment bond shall not be less than the  
8 amount of the performance bond.

9 (b) The design-build contract shall require errors and omissions  
10 insurance coverage for the design elements of the project.

11 (c) The local agency shall develop a standard form of payment  
12 and performance bond for its design-build projects.

13 22166. (a) The local agency, in each design-build request for  
14 proposals, may identify specific types of subcontractors that must  
15 be included in the design-build entity statement of qualifications  
16 and proposal. All construction subcontractors that are identified  
17 in the proposal shall be afforded all the protections of Chapter 4  
18 (commencing with Section 4100) of Part 1.

19 (b) Following award of the design-build contract, the  
20 design-build entity shall proceed as follows in awarding  
21 construction subcontracts with a value exceeding one-half of 1  
22 percent of the contract price allocable to construction work:

23 (1) Provide public notice of availability of work to be  
24 subcontracted in accordance with the publication requirements  
25 applicable to the competitive bidding process of the local agency,  
26 including a fixed date and time on which qualifications statements,  
27 bids, or proposals will be due.

28 (2) Establish reasonable qualification criteria and standards.

29 (3) Award the subcontract either on a best value basis or to the  
30 lowest responsible bidder. The process may include prequalification  
31 or short-listing. The foregoing process does not apply to  
32 construction subcontractors listed in the original proposal.  
33 Subcontractors awarded construction subcontracts under this  
34 subdivision shall be afforded all the protections of Chapter 4  
35 (commencing with Section 4100) of Part 1.

36 22167. (a) If the local agency elects to award a project pursuant  
37 to this article, retention proceeds withheld by the local agency  
38 from the design-build entity shall not exceed 5 percent, except as  
39 otherwise specified in this section.

(b) (1) In a contract between the design-build entity and the subcontractor, and in a contract between a subcontractor and any subcontractor thereunder, the percentage of the retention proceeds withheld may not exceed the percentage specified in the contract between the local agency and the design-build entity.

(2) This subdivision shall not apply if the design-build entity provides written notice to any subcontractor that is not a member of the design-build entity, prior to, or at the time the bid is requested from the subcontractor, that a bond may be required and the subcontractor subsequently is unable or refuses to furnish a bond to the design-build entity, then the design-build entity may withhold retention proceeds in excess of the percentage specified in the contract between the local agency and the design-build entity from any payment made by the design-build entity to the subcontractor.

(3) Notwithstanding any other provision of this chapter, the retention proceeds withheld from any payment by a local agency from the original design-build entity, by the original design-build entity contractor from any subcontractor, and by a subcontractor from any subcontractor thereunder, may exceed 5 percent on specific projects if the governing body of the public entity or designee, including, but not limited to, a general manager or other director of an appropriate department, has approved a finding during a properly noticed and normally scheduled public hearing and prior to the proposal due date that the project is substantially complex and therefore requires a higher retention amount than 5 percent, and the local agency includes both this finding and the actual retention amount in the procurement documents.

22168. Nothing in this article affects, expands, alters, or limits any rights or remedies otherwise available at law.

~~SEC. 14. The Legislature finds and declares that Sections 5 and 13 of this act impose a limitation on the public's right to access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article 1 of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:~~

~~In order to allow the Department of General Services, the Department of Corrections and Rehabilitation, and local agencies~~

1 ~~to fully accomplish its goals efficiently and economically, it is~~  
2 ~~necessary to enact legislation that generally limits access to, and~~  
3 ~~release of, records related to design-build.~~

4 ~~SEC. 15.~~

5 *SEC. 14.* No reimbursement is required by this act pursuant to  
6 Section 6 of Article XIII B of the California Constitution because  
7 the only costs that may be incurred by a local agency or school  
8 district will be incurred because this act creates a new crime or  
9 infraction, eliminates a crime or infraction, or changes the penalty  
10 for a crime or infraction, within the meaning of Section 17556 of  
11 the Government Code, or changes the definition of a crime within  
12 the meaning of Section 6 of Article XIII B of the California  
13 Constitution.